

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NORTHWEST HOME DESIGNING,
INC.,

Plaintiff,

v.

BENJAMIN RYAN COMMUNITIES,
LLC, and JOHN RYAN BAYS,

Defendant.

CASE NO. C14-5808BHS

ORDER DENYING MOTION
FOR RECONSIDERATION

This matter comes before the Court on Plaintiff Northwest Home Designing, Inc.’s (“Northwest”) motion for reconsideration (Dkt. 101). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On September 26, 2016, the Court granted in part and denied in part Defendants Benjamin Ryan Communities, LLC (“BRC”) and John Ryan Bays’s (“Bays”) (collectively “Defendants”) motion for summary judgment. Dkt. 100. In relevant part,

1 the Court granted summary judgment on Northwest's claim that BRC plan 2353 does not
2 infringe Northwest's plan 2501/2502. *Id.*

3 On October 1, 2016, Northwest moved for reconsideration. Dkt. 101.

4 II. DISCUSSION

5 Motions for reconsideration are governed by Local Rules W.D. Wash. LCR 7(h),
6 which provides as follows:

7 Motions for reconsideration are disfavored. The court will ordinarily deny
8 such motions in the absence of a showing of manifest error in the prior
9 ruling or a showing of new facts or legal authority which could not have
10 been brought to its attention earlier with reasonable diligence.

11 The Ninth Circuit has described reconsideration as an "extraordinary remedy, to be used
12 sparingly in the interests of finality and conservation of judicial resources." *Kona*
13 *Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quoting 12 James
14 Wm. Moore et al., *Moore's Federal Practice* § 59.30[4] (3d ed. 2000)). "[A] motion for
15 reconsideration should not be granted, absent highly unusual circumstances, unless the
16 district court is presented with newly discovered evidence, committed clear error, or if
17 there is an intervening change in the controlling law." *Id.* (quoting 389 *Orange Street*
18 *Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).

19 In this case, Northwest requests that the Court reconsider its dismissal of
20 Northwest's claim that BRC plan 2353 does not infringe Northwest's plan 2501/2502.
21 Dkt. 101. Although Northwest provides three grounds for disagreement, Northwest fails
22 to argue that the Court committed clear error. First, Northwest argues that the claim was
not properly before the Court. Dkt. 101 at 2–4. Northwest contends that BRC

1 | improperly relied on an expert declaration to put the claim at issue and “effectively
2 | offloaded a vast majority of its argument in order to circumvent the briefing page limit.”
3 | Dkt. 101 at 3. The number of claims in this case is massive and the questions of
4 | copyright law required extensive briefing as well. Once the Court decided the questions
5 | of law, it turned to an application of those laws to one of Northwest’s claims. The Court
6 | cited both parties’ experts’ reports and thoroughly considered all relevant evidence.
7 | Under these circumstances, the Court is unable to conclude that there was anything
8 | improper about failing to provide a specific argument for each of Northwest’s claims.
9 | Therefore, the Court denies Northwest’s motion on this issue.

10 | Second, Northwest argues that the changes requested by BRC provide direct
11 | evidence of copying. The Court cited authorities for and thoroughly explained the legal
12 | difference between copying and wrongful copying. Dkt. 100 at 17–19. The fact that
13 | BRC made direct alterations to Northwest’s work does not show wrongful copying.
14 | Therefore, the Court denies Northwest’s motion on this issue.

15 | Finally, Northwest argues that there are unique similarities between the two
16 | works. Dkt. 101 at 6–7. Northwest claims that the two plans share the same angled
17 | doorway and other similar external features. *Id.* The Court previously concluded as
18 | follows:

19 | Although the Court has found that Northwest has shown some
20 | protectable elements in its plan, those indispensable expressions do not
21 | outweigh the overwhelming inclusion of nonprotectable elements. Even if
22 | BRC had full access to Northwest’s plan, this evidence at most proves
copying but not wrongful copying. The slight similarities do not pass the
extrinsic test of objective similarities between the two works.

1 Dkt. 100 at 19. Northwest has failed to submit sufficient evidence to alter that
2 conclusion.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that Northwest's motion for reconsideration
5 (Dkt. 101) is **DENIED**.

6 Dated this 16th day of November, 2016.

7 
8

9 BENJAMIN H. SETTLE
United States District Judge